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Phoenix, Arizona 85007

Robert R. Corbin

December 14, 1979

LAW LIBRARY ARIZONA ATTORNEY GENERAL

Mr. James H. McCutchan
State Mine Inspector
705 West Wing
State Capitol
Phoenix, AZ 85007

Re: I79-295 (R79-298)

Dear Mr. McCutchan:

In your letter of October 30, 1979, you asked for our opinion as to whether the head of a state agency has the authority to require receipts from state employees for meals, lodging and incidental travel expenses incurred while traveling on official business within the state.

The Assistant Director for the Division of Finance has the authority, pursuant to A.R.S. §§ 35-181.01.A and 38-622.C, to prescribe the procedures by which claims against the state are paid, including claims for travel expenses under A.R.S. § 38-624.A. We have been advised that on October 23, 1979, the Assistant Director for the Division of Finance issued a directive to all state agencies and departments that receipts for travel expenses are no longer required and that all employees are entitled to a flat rate payment of \$40.00 per day. You are concerned because, pursuant to A.R.S. §§ 38-622.B and 35-182, the head of a state agency or department is required to certify that the amounts claimed for travel and subsistence were expended.¹ Therefore, in order to fully answer your question, we must examine whether the Assistant Director had the authority to issue the directive and whether A.R.S. § 38-624.A, concerning travel expenses of state employees, authorizes the payment of \$40.00 per day for travel expenses whether or not actually incurred.

1. See also A.R.S. § 35-181.02 wherein the Assistant Director of Finance must determine whether funds have been expended for a valid public purpose.

A.R.S. § 35-181.01.A provides that all claims against the state for obligations authorized, required or permitted to be incurred by any state officer or agency, shall be paid in accordance with procedures prescribed by the Assistant Director for the Division of Finance. A.R.S. § 38-622.C provides that claims by public officers, deputies and employees for expenses of transportation and per diem subsistence allowance shall be submitted on forms prescribed by and in the manner required by the Department of Finance. The Department of Finance is authorized only to establish procedures with respect to the payment of travel claims. It has no authority to establish a fixed sum as reimbursement for travel expenses. Thus, we conclude that the Assistant Director of Finance lacked authority to issue a directive that entitles all state employees to receive \$40.00 per day irrespective of actual expenses.

Moreover, even if it could be argued that the Department of Finance was merely interpreting the statute authorizing payment of a per diem allowance, such an interpretation is not warranted by the wording of the statute. A.R.S. § 38-624 provides in part:

A. A per diem allowance may be claimed in an amount not to exceed forty dollars for travel within the state, for each twenty-four hour period for each person, unless otherwise provided by law. (Emphasis added.)

B. A per diem subsistence allowance may be claimed in the amount of forty dollars for travel without the state, for each twenty-four hour period for each person, unless otherwise provided by law. If actual expenses claimed exceed forty dollars, a per diem subsistence allowance may be claimed in the amount of actual expenses incurred but not to exceed seventy-five dollars if receipts of such actual expenses are furnished.

The language of subsection A, "may be claimed in an amount not to exceed", implies that a claim of an amount less than \$40.00 is contemplated. In contrast, subsection B provides that an allowance "may be claimed in the amount of forty dollars", which clearly grants that amount to a person who travels outside the state. The Legislature worded the provisions differently, presumably intending different results.

Furthermore, both A.R.S. § 38-624.A and A.R.S. § 41-1104 were amended in Ch. 211, Laws 1979. A textual analysis of those statutes indicates that different treatment is intended for employee and legislative reimbursement expenses. A.R.S. § 41-1104.B provides, in pertinent part, as follows:

B. Each member of the legislature shall be paid the sum of twenty dollars each day for subsistence during a regular or special session and the sum of twenty dollars each day for subsistence when a member acts on a legislative matter, other than in a regular or special session, upon the prior approval of the presiding officer of the house of which he is a member. Each member whose permanent residence is outside of Maricopa County shall receive an additional twenty dollars for each day as subsistence in a regular or special session.
. . . (Emphasis added.)

The language of A.R.S. § 41-1104 is clearly different from the language of A.R.S. § 38-624.A. In A.R.S. § 41-1104 there is a clear mandate that each member of the Legislature "shall be paid" the sums set forth therein regardless of actual expenses incurred. By comparison, the language "may be claimed in an amount not to exceed" in A.R.S. § 38-624.A implies that an amount less than \$40.00 may be claimed. Since in Ch. 112, Laws 1979, A.R.S. § 41-1104 immediately follows A.R.S. § 38-624.A, the Legislature must have been aware of the difference in language between these two sections and the different results that flow therefrom. We conclude, therefore, that A.R.S. § 38-624.A does not authorize the payment of a flat rate of \$40.00 to employees if expenses in that amount were not actually incurred.^{2/}

2. We note that in Ariz.Att'yGen.Op. No. 75-399 (R75-33), we concluded that the Division of Finance can reimburse state employees and officials for only those amounts that have actually been spent and to do otherwise would be in violation of Art. 9, § 7 of the Arizona Constitution. We do not find it necessary to address the constitutional issue in this opinion.

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You have asked specifically whether the head of a state agency may require receipts from state employees for travel expenses incurred while traveling on official business within the state. We advise you to continue with your present procedure of requiring receipts from your employees until such time as the Assistant Director of the Division of Finance prescribes a different procedure which adequately ensures that state employees are being reimbursed only for amounts actually expended, as required by A.R.S. § 38-624.A.3/

Sincerely,



BOB CORBIN
Attorney General

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3. The Assistant Director of the Division of Finance has several procedural alternatives available to assure that reimbursements are properly made. He may require agency heads to keep receipts without turning them over to the Division of Finance. He may even dispense entirely with a receipt system, relying on employee and employer affidavits for certification of expenditures. In the event the Assistant Director adopts this latter procedure, he may also require employees to produce proof of expenses on a spot-auditing basis. In any event the Assistant Director has the authority to establish general procedures which facilitate the implementation of a uniform statewide policy with respect to travel reimbursement.